

UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA

\* \* \*

WADE ALAN KNIGHT,

Case No. 3:22-cv-00384-MMD-CSD

**Plaintiff,**

## ORDER

## CITY OF ELKO, *et al.*,

## Defendants.

11       Pro se Plaintiff Wade Alan Knight brings this action against Defendants Tyler  
12 Trouten, Andrew Cunningham, Bartolo Ortiz, City of Elko, County of Elko, Aitor Narvaiza,  
13 Adrienne Parry, and Melanie Edgmond under 42 U.S.C. § 1983.<sup>1</sup> (ECF No. 11 (“FAC”).)  
14 Before the Court is the Report and Recommendation (“R&R”)<sup>2</sup> of United States Magistrate  
15 Judge Craig S. Denney (ECF No. 15), recommending that the Court allow certain claims  
16 and Defendants to proceed, and dismiss others with prejudice. Judge Denney also  
17 recommended the denial of Plaintiff’s motion for appointment of counsel (“Motion”). (ECF  
18 Nos. 12, 15.) Plaintiff’s objections to the R&R were due March 7, 2023. To date, Plaintiff  
19 has not objected to the R&R. For this reason, and as explained below, the Court adopts  
20 the R&R in full.

Because there were no objections, the Court need not conduct de novo review, and is satisfied that Judge Denney did not clearly err. See *United States v. Reyna-Tapia*, 328 F.3d 1114, 1116 (9th Cir. 2003) (“De novo review of the magistrate judges’ findings and recommendations is required if, but *only* if, one or both parties file objections to the

<sup>1</sup>The Court previously granted Plaintiff leave to file an amended complaint. (ECF No. 9.)

27       <sup>2</sup>On February 21, 2023, Plaintiff filed a request for a status update of this case.  
28 (ECF No. 16.) On that same day, Judge Denney issued his R&R, and a notice of the R&R  
was delivered to Plaintiff. (ECF No. 15.)

1 findings and recommendations.") (emphasis in original). To start, Judge Denney correctly  
2 found that Plaintiff's Fourth Amendment claim should proceed against Defendants  
3 Cunningham, Ortiz, and Edgmond because Plaintiff adequately alleged that he was  
4 stopped, arrested, and detained without probable cause. (ECF No. 15 at 5.) See *Lacey*  
5 *v. Maricopa Cnty.*, 693 F.3d 896, 918 (9th Cir. 2012) (citation omitted). Next, Judge  
6 Denney correctly concluded that Plaintiff failed to provide any factual allegations against  
7 Supervisory Defendants Trouten, Narvaiza, and Parry, and that they should be dismissed  
8 with prejudice. (*Id.* at 6.) See *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007).  
9 Plaintiff also fails to state a colorable claim against the City of Elko and Elko County  
10 because he only recites the elements for municipal liability but fails to provide any factual  
11 allegations to support his claim. (*Id.* at 7.) See *id.* Finally, Judge Denney correctly found  
12 that Plaintiff's Motion should be denied because he failed to show exceptional  
13 circumstances for appointment of counsel, address the likelihood of success on the  
14 merits, and demonstrate an inability to articulate his claims or that the legal issues in this  
15 case are overly complex. (*Id.* at 7-8.) See *Palmer v. Valdez*, 560 F.3d 965, 970 (9th Cir.  
16 2009) (citations omitted); *Harrington v. Scribner*, 785 F.3d 1299, 1309 (9th Cir. 2015).  
17 Accordingly, the Court adopts Judge Denney's R&R in full.

18 It is therefore ordered that Judge Denney's Report and Recommendation (ECF  
19 No. 15) is accepted and adopted in full.

20 It is further ordered that Plaintiff's Fourth Amendment claim may proceed against  
21 Defendants Andrew Cunningham, Bartolo Ortiz, and Melanie Edgmond.

22 It is further ordered that Defendants Tyler Trouten, Aitor Narvaiza, Adrienne Parry,  
23 City of Elko, and County of Elko are dismissed with prejudice.

24 It is further ordered that Plaintiff's motion for appointment of counsel (ECF No. 12)  
25 is denied.

26 The Clerk of Court is directed to issue summonses for Defendants Andrew  
27 Cunningham, Bartolo Ortiz, and Melanie Edgmond, and deliver the same, to the U.S.  
28 Marshal for service. The Clerk is directed to send sufficient copies of the FAC (ECF No.

1 11) and this order to the U.S. Marshal for service on Defendants. The Clerk is directed to  
2 send to Plaintiff three USM-285 forms. Plaintiff will have 21 days to furnish to the U.S.  
3 Marshal the required USM-285 forms with relevant information as to each Defendant on  
4 each form at 400 S. Virginia Street, 2nd floor, Reno, Nevada 89501. Within 20 days after  
5 receiving from the U.S. Marshal a copy of the USM-285 forms showing whether service  
6 has been accomplished, if any Defendant was not served, and if Plaintiff wants service to  
7 be attempted again, he is directed to file a motion with the Court providing a more detailed  
8 name and/or address for service or indicating that some other method of service should  
9 be attempted.

10 Plaintiff is reminded that under Fed. R. Civ. P. 4(m), that service must be  
11 completed within 90 days of the date of this order. If Plaintiff requires additional time to  
12 meet any of the deadlines set by the Court, he must file a motion for extension of time  
13 under LR 1A 6-1 *before* the expiration of the deadline, and the motion must be supported  
14 by a showing of good cause. A motion filed after a deadline set by the Court or applicable  
15 rules will be denied absent a showing of excusable neglect.

16 Plaintiff is advised that once a Defendant is served, Plaintiff must serve a copy of  
17 every pleading or other document submitted for consideration by the Court upon the  
18 Defendant or, if an appearance has been entered by counsel, upon the attorney. Plaintiff  
19 must include with the original of each document to be filed with the Court a certificate  
20 stating that a true and correct copy of the document was served on the Defendant, or  
21 counsel, if the Defendant has an attorney. Under LR 5-1, the proof of service must show  
22 the day and manner of service and the name of the person served. The Court may  
23 disregard any paper received which has not been filed with the Clerk, or that fails to  
24 include a certificate of service.

25 DATED THIS 9<sup>th</sup> Day of March 2023.

26   
27 MIRANDA M. DU  
28 CHIEF UNITED STATES DISTRICT JUDGE